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No. 84-1181

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1985

BEST AVAILABLE COPY

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioner,

against

BENIGNO CLASS,

Respondent.

On Writ of Certiorari to the Court of Appeals of the State of New York

RESPONSE TO THE MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF

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ARGUMENT

The motion for permission to file a supplemental brief should be denied; alternatively, respondent's contention that the writ of certiorari should be dismissed on jurisdictional grounds is without substance.

The Court should deny respondent's motion for permission to file a supplemental brief, or in the event that such permission is granted, the Court should deny respondent the ultimate relief which he seeks—a dismissal of the writ of certiorari on jurisdictional grounds.

In *Michigan* v. *Long*, 463 U.S. 1032 (1983), the Court announced that in order to avoid the unseemly and highly speculative assessment of state court decisions for the purpose of ascertaining federal jurisdiction when the state court has cited both federal and state constitutional provisions in granting relief, the Court would henceforth limit its jurisdictional considerations to the "face" of the opinion under review:

> Accordingly, when as in this case, a state court decision fairly appears to rest *primarily* on federal law, or to be *interwoven* with the federal law, and when the adequacy and independence of any possible state law ground *is not clear from the face of the opinion*, we will accept as the most reasonable explanation that the state court decided the case as it did because it believed the federal law required it do so. If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a *plain statement in its judgment or opinion* that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached.

463 U.S. at 1040-41 (emphasis added).

By the present motion and supplemental brief, respondent would have the Court now depart from this rule of *Michigan* v. *Long*, *supra*, go far beyond the four corners of the opinion in *People* v. *Class*, 63 N.Y.2d 491 (1984) (A. 55-65),* and find instead that the Court's jurisdiction to hear the instant case has been rendered void *ab initio* by a footnote in a later, generally unrelated decision of the state court, *People* v. *Melvin Johnson*, —— N.Y.2d —— (decided November 26, 1985), issued a full year after the *Class*

* Numerical references preceded by "A." are to the pages of the Joint Appendix.

decision being reviewed by this Court, during which year the composition of that seven-judge Court of Appeals was altered by the departure and replacement of two of the judges who had participated in the *Class* decision. If this Court's plain statement in *Michigan* v. *Long*, which was designed to eliminate the speculative debate about the interpretation of state court opinions, is to have any meaningful effect, respondent's efforts to have this Court engage now in a post-argument analysis of New York State law, based upon the New York Court of Appeals' new, retrospective, fleeting comment in a largely unrelated decision, should be summarily rejected. For, such an endeavor is fundamentally antithetical to the spirit and purpose of the salutary rule of *Michigan* v. *Long*. Accordingly, the Court should not condone an extension of the debate already had, at length, about the analytical foundations of *People* v. *Class* beyond the face of that decision. Therefore, the Court should refuse respondent permission to file a supplemental brief, the sole purpose of which is to extend this discussion to a consideration of the meaning of a citation in a footnote in an unrelated state case.

In any event, the New York Court of Appeals' footnote in *People* v. *Melvin Johnson* does not bear out respondent's contention that it has now, surprisingly and suddenly, become clear that the New York Court of Appeals' year-old decision in *New York* v. *Class* rested on truly independent state grounds. There has never been any dispute before this Court that the New York Court of Appeals asserted that the police action in *Class* violated both the federal and the state constitutions. *People* v. *Class*, 63 N.Y.2d 491, 493 (1984) (A. 55); *see* United States Const., Amend. IV; New

York Const., Art. I, § 12. As this Court is well aware from the original briefs filed by the parties (Resp. Br., Pt. I; Pet. Reply Br. 2-8) and from oral argument, it has been petitioner's contention throughout that from the face of the *Class* opinion (A. 55-65) it is evident that the decision rested largely on federal constitutional grounds, and that, at the very least, the state constitutional concerns were "interwoven" with those of the federal constitution; "[t]his is one of those cases where 'at the very least, the [state] court felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner it did'." *Delaware* v. *Prouse*, 440 U.S. 648, 653 (1979) *cited with approval in Michigan* v. *Long*, 463 U.S. at 1042, n.8.

The majority's footnote in *People* v. *Johnson* does not, on its face, defeat this conclusion. In *Johnson*, where the New York Court of Appeals uttered a "plain statement" that it was deciding that case solely on state constitutional grounds, a five-judge majority of the Court of Appeals suppressed a defendant's confession because he had been arrested in violation of the state constitutional rule pertaining to the manner in which the police are required to assess the reliability of informants. The footnote to which respondent now draws the Court's attention answers an argument posited by the two concurring judge's that New York's state exculsionary rule was founded on common law evidentiary concerns, rather than upon the state constitution. By the footnote in issue, the New York Court of Appeals asserted that the state constitution did give rise to an exclusionary rule, and merely cited *People* v. *Class* as an example. However, nothing in that footnote plainly says that reliance on the state constitution and its

exclusionary rule in *Class* was not "interwoven" with a reliance on the federal constitutional provisions and the federal exclusionary rule. Nor is there anything in the footnote which plainly declares that the state constitution, alone, would have required suppression of the evidence in *Class*, had the Court of Appeals not "felt compelled by what it understood to be federal constitutional considerations to construe and apply its own law in the manner it did." *Michigan* v. *Long*, 463 U.S. at 1042, n.8. Rather, to accept respondent's arguments for a divestiture of jurisdiction, this Court would first have to interpret the meaning of this ambiguous footnote in precisely the same fashion that it had eschewed in *Michigan* v. *Long*.

In the end, it should not be for a state Court of Appeals, perhaps displeased by the grant of certiorari in a case it decided primarily on federal constitutional grounds, to have the ultimate power to deprive this Court of its jurisdiction, after the fact, by a new, skewed interpretation of an earlier decision which so plainly rested on, and was interwoven with, federal constitutional concerns. This Court, from the date on which it grants certiorari until the date on which it renders final opinion, should not have to remain ever-vigilant for subsequent state-law interpretations which construe an earlier case to mean something quite other than that which was plainly stated on the face of, and within the four corners of, that decision.

Conclusion

The motion for permission to file a supplemental brief should be denied; alternatively, respondent's contention that the writ of certiorari should be dismissed on jurisdictional grounds should be rejected.

Respectfully submitted,

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